

New York  
Northern California  
Washington DC  
São Paulo  
London

Paris  
Madrid  
Hong Kong  
Beijing  
Tokyo



**Lawrence Portnoy**

Davis Polk & Wardwell LLP 212 450 4874 tel  
450 Lexington Avenue lawrence.portnoy@davispolk.com  
New York, NY 10017

March 26, 2021

The Honorable John P. Cronan  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

Re: *In re Luckin Coffee Inc. Securities Litigation*, Case No. 20-cv-01293-JPC-JLC

Dear Judge Cronan:

We represent defendant Luckin Coffee Inc. (“Luckin”) in the above-referenced matter. We submit this letter motion pursuant to Rule 3(B) of the Court’s Individual Rules and Practices to request a one-week extension of Luckin’s deadline to file, if necessary, its reply brief in support of its motion to dismiss the Consolidated Amended Complaint (ECF No. 210) from March 30, 2021 to April 6, 2021.

As this Court is aware (ECF No. 234), on February 5, 2021, Luckin’s Joint Provisional Liquidators (the “JPLs”) commenced the Chapter 15 Proceeding in Bankruptcy Court. *See In re Luckin Coffee Inc. (In Provisional Liquidation)*, No. 21-10228 (MG) (Bankr. S.D.N.Y.). On March 16, 2021, the Bankruptcy Court held a hearing on the Chapter 15 petition and stated, at the conclusion of the hearing, that it would “enter a written order that recognizes the Cayman proceeding as a foreign main proceeding.” (Ex. A at 63:16-17.) Recognizing the Cayman proceeding as a foreign main proceeding would have the effect of automatically staying litigation against Luckin in the United States, including in this Action. The Bankruptcy Court, however, reserved judgment on the JPLs’ further relief to stay litigation as to Luckin’s co-defendants. (*Id.* at 63:17-19.) On March 22, 2021, two competing versions of a proposed order were submitted to the Bankruptcy Court. Both versions acknowledge a stay of litigation against Luckin. However, as of the time of this letter, the Bankruptcy Court has not entered any order.

Accordingly, in order to conserve the resources of the parties and this Court, Lead Plaintiffs<sup>1</sup> and Luckin have conferred and agreed to extend Luckin’s deadline to file, if necessary, its reply brief in support of its motion to dismiss the Consolidated Amended Complaint from

---

<sup>1</sup> The Lead Plaintiffs are Sjunde AP-Fonden and Louisiana Sheriffs’ Pension and Relief Fund.

March 30, 2021 until April 6, 2021. The Underwriter Defendants<sup>2</sup> requested the same extension to file their reply brief in support of their motion to dismiss yesterday (ECF No. 248).

Extension of this deadline would not affect any other scheduled dates in this action. This is Luckin's second request to extend this deadline; on February 19, 2021, the Court granted Luckin's first request for an extension. Lead Plaintiffs consent to this request.

In light of the foregoing, Luckin respectfully requests that the Court grant this letter motion to extend Luckin's deadline to file its reply brief in support of its motion to dismiss the Consolidated Amended Complaint.

Respectfully submitted,

/s/ Lawrence Portnoy

Lawrence Portnoy


Luckin's request is granted. Luckin shall have until April 6, 2021 to submit its reply brief.

SO ORDERED.

Electronic Filing

Date: March 26, 2021  
New York, New York

cc: All counsel of record (via ECF)

  
JOHN P. CRONAN  
United States District Judge

---

<sup>2</sup> The Underwriter Defendants are Credit Suisse Securities (USA) LLC, Morgan Stanley & Co. LLC, China International Capital Corporation Hong Kong Securities Limited, Haitong International Securities Company Limited, KeyBanc Capital Markets Inc., and Needham & Company, LLC.

## **EXHIBIT A**

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 20-10228

4 - - - - - x

5 In the Matter of:

6

7 LUCKIN COFFEE,

8

9 Debtor.

10 - - - - - x

11 United States Bankruptcy Court

12 One Bowling Green

13 New York, NY 10004

14

15 March 16, 2021

16 10:13 AM

17

18

19

20

21 B E F O R E :

22 HON MARTIN GLENN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: UNKNOWN

1 HEARING re (Doc ## 1 to 8, 10, 13, 21, 22, 24, 25, 27, 29  
2 to 33)

3  
4 HEARING re Motion of the foreign representative for Chapter  
5 15 recognition and final relief. ECF Docket #3.

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

2

3 DLA PIPER LLP

4 Attorneys for Foreign Representative

5 1201 North Market Street

6 Wilmington, DE 19801

7

8 BY: CRAIG R. MARTIN (TELEPHONICALLY)

9

10 CAMPBELLS

11 Attorneys for Foreign Representative

12 Floor 4, Willow House

13 Cricket Square

14 Grand Cayman KY1-9010

15 Cayman Islands

16

17 BY: GUY MANNING (TELEPHONICALLY)

18

19 ROLNICK KRAMER SADIGHI LLP

20 Attorneys for Winslow Funds

21 1251 Avenue of the Americas

22 New York, NY 10020

23

24 BY: LAWRENCE ROLNICK (TELEPHONICALLY)

25

1 DAVIS POLK & WARDWELL LLP

2 Attorneys for the Debtor

3 450 Lexington Avenue

4 New York, NY 10017

5

6 BY: JONATHAN CHANG (TELEPHONICALLY)

7

8 BROWN RUDNICK LLP

9 Attorneys for

10 7 Times Square

11 New York, NY 10036

12

13 BY: SIGMUND WISSNER-GROSS (TELEPHONICALLY)

14

15 EISEMAN LEVINE

16 Attorneys for Kimson

17 26 Knolls Drive

18 New Hyde Park, NY, 11040

19

20 BY: LAURENCE MAY (TELEPHONICALLY)

21

22

23

24

25

1       AFN LAW

2               Attorneys for Lai Ye

3               2022 East Jefferson Street

4               Seattle, WA 98122

5

6       BY:    ANGUS NI (TELEPHONICALLY)

7

8       ALSO APPEARING TELEPHONICALLY:

9       ALEXANDER LAWSON, Insolvency Practitioner

10       MARK XU

11       LILI ROARKE

12       YINI JAO

13       DUSTIN WALLER

14       HUSSAM AL RAJHI

15       DRAGAN JOVANOVIC

16       ALAN HARLING

17       TIFFANY WO

18       SHARAN NIRMUL

19       DEITRICH KNAUTH

20       JOEL LEVITIN

21       WILLIAM COBB

22       RICHARD BODNAR

23       LAWERENCE PORTNOY

24       DAVID JANUSZEWSKI

25       SAMUEL MANN

1 ADAM MINTZ  
2 SHEILA RAMESH  
3 LAWRENCE FOGELMAN  
4 JASON JACOBS  
5 SHAWN WEST  
6 MATTHEW MOGENSEN  
7 DANIEL HOLZMAN  
8 TED SMITH  
9 NICHOLAS TENGE  
10 THOMAS CALIFANO  
11 DEREK CHAN  
12 TIMOTHY GRAULICH  
13 ALEXANDER LAWSON  
14 JOANNA MCDONALD  
15 THOMAS PITTA  
16 NATHAN SHEPS  
17 NATASHA TSIOURIS  
18 FRED NG  
19 ANDREW BEHLMANN  
20 KIM DENNISON  
21 MICHAEL ETKIN  
22 ROBERT MOSKALEWIZA  
23 SIGMUND WISSNER-GROSS  
24 TIFFANY WONG  
25 ON HEI CHAU

1 WILLIAM HAGMANN  
2 ERIK STIER  
3 STEVEN CHURCH  
4 BENJAMIN FINESTONE  
5 ELIZABETH TARAIIA  
6 DAVID ABELIAN  
7 EDWARD HABER  
8 ERIK STIER  
9 MARTIN SCHINDLER  
10 JAI CHANDRASEKHAR  
11 NICHOLAS GERSH  
12 SALVATORE GRAZIANO  
13 JOHN RIZIO-HAMILTON  
14 JESSICA L. JUSTINA  
15 MICHAEL DELLANGELO  
16 BRIAN MASUMOTO  
17 YICHEN LIU

18  
19  
20  
21  
22  
23  
24  
25

1 action filed in the Cayman Islands where the court there  
2 would be faced with the same inquiry. And so to the extent  
3 the Court were to turn its focus on comity, it would be our  
4 submission that the appointment order authorizing and asking  
5 the JPLs to negotiate a retracting proposal coupled with  
6 1521(a)(1) would create an appropriate environment for the  
7 Court to enter the type of temporary stay to facilitate  
8 restructuring negotiations what we're talking about. And as  
9 mentioned in our reply papers, we are happy to submit to  
10 status reports or status conferences both to the extent that  
11 any of the parties that have objected this morning feel  
12 we're not engaging with them, they will have a forum to  
13 pursue any additional sufficient protection that might be  
14 appropriate. But it would be my hope that that wouldn't be  
15 necessary.

16 THE COURT: Mr. Martin, just confirm for me that  
17 none of the pending actions against non-debtors, whether  
18 directors and officers, underwriters, accountants, they're  
19 all at the pleading stage, at the motion stage. None of  
20 them have moved to discovery. Is that correct?

21 MR. MARTIN: That's my understanding, yes. With  
22 the exception of the notices of depositions that may have  
23 been sent out in the Adams action down in Louisiana. But  
24 those haven't been scheduled for a date. So other than that  
25 t--

1 THE COURT: Is plaintiff's counsel in the Adams  
2 action on the line today?

3 MR. MARTIN: They are not. That's the party that  
4 I mentioned --

5 THE COURT: That's the one where you didn't give  
6 them -- they weren't on the service list.

7 MR. MARTIN: Yeah. We overlooked service. But I  
8 understand the Cahill firm's local counsel informed them. I  
9 called Mr. --

10 THE COURT: That doesn't satisfy service  
11 requirements, Mr. Martin.

12 MR. MARTIN: I understand, Your Honor. I wanted  
13 to be up front with you about that though.

14 THE COURT: Okay. You were. You were. All  
15 right.

16 MR. MARTIN: So, Your Honor, that's my reply to  
17 the points made by the objectors.

18 THE COURT: Okay. Mr. Martin, submit an order  
19 that grants recognition of the Cayman proceeding as a  
20 foreign main proceeding and take under submission the  
21 request for relief against non-debtors, as to which I'm not  
22 deciding today. I really haven't decided the issue yet.  
23 I'll tell you, Mr. Martin, that I am strongly inclined to  
24 allow all of those pending state or federal court actions to  
25 proceed before -- through the motions stage, through the

1 pleading stage. And that's why I ask whether any of them  
2 are in discovery. You mentioned that with respect to the  
3 Adams action, there's been a request for depositions.  
4 Adams' counsel is not on the line today.

5 I think that it would be wise for the JPLs to  
6 reach out to all of the plaintiffs' counsel to whom they  
7 have not spoken. They seem to have been successful, at  
8 least in part, in an RSA which you described, a recent  
9 event. I hope you will -- and I ask that you -- I direct  
10 you to file on the docket a status report with an update,  
11 including any -- a copy of the RSA if it's been executed as  
12 to which parties have been added to it. But I'm -- I'm  
13 troubled by your request to extend the stay to non-debtors  
14 when no such relief has been granted by the Cayman court,  
15 and possibly cannot be granted by the Cayman court. Comity  
16 involves respect for the foreign proceedings. It generally  
17 does not involve -- it can, but it generally does not  
18 involve granting relief that the foreign court has not  
19 granted. There have been some exceptions, including by I  
20 think Judge Chapman with respect to discovery. So it's not  
21 unprecedented, let me say. But generally comity would  
22 respect the decision or order of the foreign court in which  
23 the foreign proceeding is pending. And that's not what  
24 you're asking for.

25 I would also ask -- I would like a supplemental

1 filing from you. And I'll give any of the objectors a  
2 chance to respond. I want the details on the D&O insurance  
3 policy. It sounds like it's a tier of policies. And when  
4 can you provide that? Is a week sufficient?

5 MR. MARTIN: Your Honor, I'll have two comments on  
6 that. I'll have to work with the Davis Polk firm on that.  
7 And I believe Mr. Chang said the policies are under PRC law.  
8 So if they're in Mandarin and not in English and you  
9 actually want to see the policies, I don't know if they've  
10 been translated. If you just want a summary, then --

11 THE COURT: Okay. Here's what I would ask then.  
12 Either do your filing within a week or file a status report  
13 as to if they're in Chinese, about how long it's going to  
14 take to do that. Okay?

15 MR. MARTIN: Okay. And, Your Honor would like to  
16 see the actual text of the policies, or...

17 THE COURT: If they're in Chinese, no.

18 MR. MARTIN: Okay.

19 THE COURT: I would certainly like a description  
20 of the policies. I'm quite familiar with D&O policies -- in  
21 English, not in Chinese -- and self-insured retentions. And  
22 I am very interested and I do want to know whether there's  
23 entity coverage, whether there is priority of payments  
24 provision in the policy such that the Ds and Os are paid --  
25 you know, their defense costs are reimbursed before any

1 coverage of the entities. So I'm familiar with priority of  
2 payment provisions in D&O policies. I do want to know -- I  
3 wouldn't go through -- well, let me leave it at that. Let's  
4 see what you come up with. Okay?

5 MR. MARTIN: Yes, Your Honor. That would be fine.

6 THE COURT: All right. So either do the filing or  
7 give me a status report within a week.

8 MR. MARTIN: Certainly.

9 THE COURT: And I will give any objectors a week  
10 after the actual filing by the foreign representative with  
11 respect to policies if -- a week from whenever that's filed.  
12 Not the status report, but the actual filling of that.  
13 Okay?

14 MR. MARTIN: Thank you, Your Honor.

15 THE COURT: All right. Anything else? So just to  
16 be clear, I will enter a written order that recognizes the  
17 Cayman proceeding as a foreign main proceeding, but I'm not  
18 deciding the issue of whether the stay should be -- for now  
19 the stay is not extended. You should all go forward with  
20 any motions or pleadings, et cetera. Okay?

21 MR. MARTIN: All right. Thank you, Your Honor.  
22 And we will revise the order and circulate it amongst the  
23 objectors. And then I presume you would prefer it to be  
24 submitted through the chambers rules mechanism with the  
25 email and the Word version.

1                   THE COURT:   Yes.   Yeah.   You send it to  
2                   MG.Chambers@NYSB.uscourts.gov.

3                   MR. MARTIN:   Okay.   We will try to get that done  
4                   as soon as we can.

5                   THE COURT:   All right.

6                   MR. MARTIN:   And certainly thank the Court and the  
7                   court staff for all of the assistance in allowing us to get  
8                   before you today.

9                   THE COURT:   All right.   Thank you very much,  
10                  everybody.   We are adjourned.

11                  (Whereupon these proceedings were concluded)

12

13

14

15

16

17

18

19

20

21

22

23

24

25